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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9 JEFFREY SCOTT ZIEGLER,

10                   Petitioner,

11                   v.

12 BRUNO STOLC,

13                   Respondent.

No. C10-5263 BHS/KLS

ORDER DENYING MOTIONS FOR  
COUNSEL, EXTENSION OF TIME AND  
FOR EVIDENTIARY HEARING

This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner's previous motion for the appointment of counsel was denied. Dkt. 12. Petitioner files a second motion again requesting counsel because he is indigent. Dkt. 26. Petitioner also files a motion for extension of time to request an evidentiary hearing (Dkt. 29), and a motion for evidentiary hearing (Dkt. 30).

The decision to hold a hearing is committed to the court's discretion. *Williams v. Woodford*, 306 F.3d 665, 688 (9th Cir. 2002). The petitioner bears the burden of showing the need for a hearing. *Pulley v. Harris*, 692 F.2d 1189, 1197 (9th Cir. 1982), rev'd on other grounds, 465 U.S. 37 (1984); *Baja v. Ducharme*, 187 F.3d 1075 (9th.Cir. 1999). An evidentiary hearing is not required unless the petitioner alleges facts which, if proved, would entitle him to relief. *Townsend v. Sain*, 372 U.S. 293, 312 (1963). The petitioner must produce some evidence

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1 demonstrating the existence of a genuine question of material fact. *Morris v. State of California*,  
2 966 F.2d 448, 454-55 (9th Cir. 1991), cert. denied, 506 U.S. 831 (1992) (Wishful suggestions  
3 cannot substitute for declaratory or other evidence.) A hearing is not required if the claim  
4 presents a purely legal question, or if the claim may be resolved by reference to the state court  
5 record. *Campbell v. Wood*, 18 F.2d 662, 679 (9th Cir.) (en banc), cert. denied, 114 S. Ct. 2125  
6 (1994).

7 Petitioner claims that his due process rights were violated when he was not given a  
8 sentence hearing during his initial sentencing and his resentencing, and when additional charges  
9 were added mid-trial. Dkt. 10-2, pp. 1, 3. Respondent argues that Petitioner has failed to  
10 exhaust his claims. The court finds that these issues may be resolved solely by reference to the  
11 state court record. Therefore, Petitioner's request for an evidentiary hearing is denied.

12 Likewise, Petitioner's request for the appointment of counsel is denied as these requests  
13 are linked to the granting of an evidentiary hearing. See Rule 8(c), 28 U.S.C. § 2254. (If an  
14 evidentiary hearing is required, the Court may appoint counsel for a petitioner who qualifies  
15 under 18 U.S.C. § 3006(A)(g)). As Petitioner was previously advised, there is no right to have  
16 counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is  
17 required, because the action is civil, not criminal, in nature. See *Terravona v. Kincheloe*, 852  
18 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule  
19 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.  
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21 Accordingly, it is **ORDERED**:

22 (1) Petitioner's motions (Dkts. 26, 29 and 30) are **DENIED**.

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(2) The Clerk is directed to send copies of this Order to Petitioner.

DATED this 14th day of September, 2010.

*Karen L. Stromberg*

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Karen L. Strombom  
United States Magistrate Judge